

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

WESTPORT INSURANCE
CORPORATION,

Plaintiff,

v.

RICHARD C. HEIDLAGE, KOTIN,
CRABTREE AND STRONG, LLP, AND
NORTH AMERICAN UNDERWRITING
MANAGERS, INC.,

Defendants.

CIVIL ACTION NO.
1:05-cv-11780 DPW

**DEFENDANT RICHARD C. HEIDLAGE'S MOTION FOR LEAVE TO FILE REPLY
TO WESTPORT INSURANCE CORPORATION'S OPPOSITION TO HEIDLAGE'S
CROSS-MOTION FOR SUMMARY JUDGMENT ON WESTPORT'S CLAIMS AND
PARTIAL SUMMARY JUDGMENT ON HIS COUNTERCLAIMS**

Pursuant to Local Rule 7.1(B)(3), Defendant Richard C. Heidlage ("Heidlage") seeks leave to file the attached Reply to Westport Insurance Corporation's Opposition to his Cross-Motion for Summary Judgment on Westport's Claims and Partial Summary Judgment on his Counterclaims. The reply is necessary to clarify mischaracterizations of law and fact contained in the Plaintiff Westport's opposition. As grounds for this motion, Defendant states as follows:

1. This case concerns a legal malpractice insurer's duty to defend a malpractice claim. The policy at issue contains an endorsement limiting any covered claims to those based on conduct occurring after May 1, 2002. The underlying legal malpractice action has been in litigation, and defended by Westport, for three years. In this case, Westport seeks a declaration that it need not further defend or indemnify Heidlage in the underlying case

because some of the evidence in the underlying case suggests that no legal malpractice occurred after May 1, 2002.

2. On June 5, 2006, nearly one year after filing its Complaint for Declaratory Judgment in this Court, Plaintiff filed a Motion for Summary Judgment. On October 13, 2006, Defendant Heidlage filed a Memorandum in Opposition to Plaintiff's Motion for Summary Judgment and a Cross-Motion for Summary Judgment on Westport's Claims and Partial Summary Judgment on his Counterclaims ("Cross-Motion"). Plaintiff's opposition to Defendant's Cross-Motion, served November 13, 2006, is of an extensive nature and raises issues and arguments not previously raised by Plaintiff. The Defendant therefore requests this opportunity to respond.
3. Among other things, Westport mischaracterizes the import of a report of the Plaintiff's expert witness filed in the underlying malpractice case. Westport erroneously argues that the report conclusively establishes that the underlying claim against Heidlage is based on malpractice allegedly committed only during the period of time prior to the retroactive date set forth in Westport's policy.
4. Westport also mischaracterizes the case law it relies on in support of its argument that general allegations in a complaint (which it characterizes as "boilerplate") can never create a duty to defend and further mischaracterizes language contained in the underlying complaint as similar to the kind of "boilerplate" language addressed by the cases cited.
5. The parties to this case and to the underlying case participated in a mediation session in late November, with the goal of settling both cases. Because the mediation was not successful, Defendant files the instant Motion now. The Motions for Summary Judgment are scheduled for hearing on January 24, 2006.

WHEREFORE, Defendant respectfully requests that this Court grant him leave to file the attached Reply to Westport Insurance Corporation's Opposition to his Cross-Motion for Summary Judgment on Westport's Claims and Partial Summary Judgment on his Counterclaims.

Respectfully submitted,

RICHARD C. HEIDLAGE
By his attorney,

/s/ Richard M. Bluestein
Richard M. Bluestein, BBO# 046840
KROKIDAS & BLUESTEIN, LLP
600 Atlantic Avenue
Boston, MA 02210
(617) 482-7211

Dated: December 20, 2006

RULE 7.1(A)(2) CERTIFICATE

I hereby certify that I have conferred in good faith with opposing counsel regarding this Motion and the potential for resolving or narrowing the issues raised by the Motion in accordance with Local Rule 7.1(A)(2).

/s/ Richard M. Bluestein
Richard M. Bluestein

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent by first-class mail to those indicated as non registered participants on this 20th day of December, 2006.

/s/ Richard M. Bluestein
Richard M. Bluestein